

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

U.S. BANK NATIONAL ASSOCIATION, as trustee)	
for the registered holders of LB-UBS Commercial)	
Mortgage Trust 2007-C7, Commercial Mortgage Pass-)	
Through Certificates, Series 2007-C7,)	
)	Case No. <u>12-2298-JTM-KGG</u>
Plaintiff,)	Division No. _____
v.)	
)	
LEGENDS OF KC, LP, a Delaware limited partnership,)	
To be served through its Registered Agent:)	
Corporate Creations Network Inc.)	
3411 Silverside Road Rodney Building #104)	
Wilmington, Delaware 19810,)	
and)	
)	
All unknown owners, lien claimants, interest holders,)	
and any other persons or entities which may assert an)	
interest in the subject property,)	
To be served by publication,)	
Defendants.)	

VERIFIED COMPLAINT FOR BREACH OF NOTE AND
FORECLOSURE OF MORTGAGE

Plaintiff U.S. Bank National Association, as trustee for the registered holders of LB-UBS Commercial Mortgage Trust 2007-C7, Commercial Mortgage Pass-Through Certificates, Series 2007-C7 (“**Plaintiff**”), by and through Midland Loan Services, which is Plaintiff’s special servicer (“**Special Servicer**”), states:

PARTIES

1. Plaintiff is a national banking association bringing suit in its capacity as trustee for the registered holders of LB-UBS Commercial Mortgage Trust 2007-C7, Commercial Mortgage Pass-Through Certificates, Series 2007-C7.

2. Special Servicer is authorized to bring this suit on behalf of Plaintiff. *See* Power of Attorney, a true and correct copy of which is attached to this Complaint as **Exhibit A**.

3. Legends of KC, LP (“**Borrower**”) is a Delaware limited partnership. Borrower may be served through its registered agent, Corporate Creations Network Inc., 3411 Silverside Road Rodney Building #104, Wilmington, Delaware 19810.

4. Borrower is the owner of the fee simple title and leasehold interests to the property known as The Legends at Village West, located at the Southeast corner of Village West Parkway and Parallel Parkway, Kansas City, Wyandotte County, Kansas, as more particularly described in the Mortgage as hereinafter defined (the “**Real Property**,” and together with the personal property and leases and rents described in the Mortgage and the ALR, the “**Property**”).

5. No person having any ownership interest in the Property is now, or at any time within three months prior hereto has been, in the military service of the United States or any of its allies, nor is any person in any way entitled to the benefits and protections of the Service Members Civil Relief Act, as amended.

6. This is an action for breach of a note and foreclosure of a mortgage.

JURISDICTION AND VENUE

7. Subject matter jurisdiction is proper in this Court pursuant to 28 U.S.C. § 1332(a)(3) in that the amount in controversy exceeds \$75,000 and is between citizens of different States and in which citizens or subjects of a foreign state are additional parties. For diversity purposes, Plaintiff is a citizen of Minnesota. Upon information and belief, the general partner of Borrower is a Delaware corporation and the limited partner of Borrower is a German limited liability company.

8. Borrower has consented to personal jurisdiction in this Court. *See* **Exh. C**, at p. 61, § 17.1.

9. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(2) because the Property is located in Wyandotte County, Kansas. The designation of trial location is Kansas City, Kansas.

ALLEGATIONS COMMON TO ALL COUNTS

10. On October 20, 2005, KeyBank National Association, a national banking association (“**Original Lender**”), made a loan (together with all indebtedness due from Borrower, the “**Loan**”) to Borrower, as reflected by that certain Amended, Consolidated and Restated Promissory Note (the “**Note**”) dated July 31, 2007 in the original principal amount of \$137,000,000.00, which was duly executed by Borrower and delivered to Original Lender. A true and accurate copy of the Note is attached to this Complaint as **Exhibit B** and incorporated herein by reference.

11. In consideration of, and as security for, the Note, Borrower executed and unconditionally delivered to Original Lender a certain Amended and Restated Mortgage, Assignment of Leases and Rents, Security Agreement, and Fixture Filing (the “**Mortgage**”) dated July 31, 2007 and recorded on August 1, 2007 with the Register of Deeds of Wyandotte County, Kansas as Document No. 2007R-16808. A true and correct copy of the Mortgage is attached to this Complaint as **Exhibit C** and incorporated herein by reference.

12. The Mortgage granted Original Lender a first lien on, and security interest in, the Property. *See* **Exh. C**, at p. 2.

13. The Mortgage restated and amended the following documents:

<u>Lender's Name</u>	<u>Document No.</u>	<u>Book</u>	<u>Page No.</u>
KeyBank National Association, agent for Lender	2003R-04285	4548	222

KeyBank National Association, agent for Lender	2004R-33522	4921	369
KeyBank National Association, agent for Lender	2005R-04975	4958	503
KeyBank National Association, agent for Lender	2006R-03250	5156	182
KeyBank National Association, agent for Lender	2006R-07546	5181	451
KeyBank National Association, agent for Lender	2006R-30724	5318	608
KeyBank National Association, agent for Lender	2006R-03254	5156	212

14. The Mortgage absolutely assigned and transferred all leases, rents and profits of the Real Property (the aforementioned leases, rents and profits are hereinafter sometimes collectively referred to as the “**Rents**”) to Original Lender. *See Exh. C*, at p. 5, § 1.1(f).

15. In consideration of, and as security for, the Note, Borrower executed and unconditionally delivered to Original Lender a certain Assignment of Leases and Rents (the “**ALR**”) dated July 31, 2007 and recorded with the Register of Deeds of Wyandotte County, Kansas on August 1, 2007 as Document No. 2007R-16809. A true and correct copy of the ALR is attached to this Complaint as **Exhibit D** and incorporated herein by reference.

16. The Note, Mortgage, ALR and other related documents delivered to Original Lender, together with all assignments, are collectively referred to herein as the “**Loan Documents**.”

17. Original Lender assigned to LaSalle Bank National Association, as trustee for the registered holders of LB-UBS Commercial Mortgage Trust 2007-C7, Commercial Mortgage Pass-Through Certificates, Series 2007-C7 (“**First Assignee**”) all of its rights, title and interest in and to the Loan Documents as reflected in an Assignment of Mortgage (“**First Assignment**”) recorded with the Register of Deeds of Wyandotte County, Kansas on January 30, 2008 at

Document No. 2008R-01772 in Book 5483 at Page 144. A true and correct copy of the First Assignment is attached to this Complaint as **Exhibit E** and incorporated herein.

18. Original Lender assigned to First Assignee all of its rights, title and interest in and to the ALR as reflected in an Assignment of Assignment of Leases and Rents (“**First ALR Assignment**”) recorded with the Register of Deeds of Wyandotte County, Kansas on January 30, 2008 at Document No. 2008R-01773 in Book 5483 at Page 154. A true and correct copy of the First ALR Assignment is attached to this Complaint as **Exhibit F** and incorporated herein.

19. First Assignee, by and through Bank of America, N.A., a national banking association, as the successor by merger to LaSalle Bank National Association, a national banking association, assigned to U.S. Bank National Association, as trustee for the registered holders of LB-UBS Commercial Mortgage Trust 2007-C7, Commercial Mortgage Pass-Through Certificates, Series 2007-C7 (“**Second Assignee**”), all of its rights, title and interest in and to the Loan Documents as reflected in an Assignment of Mortgage (“**Second Assignment**”) recorded with the Register of Deeds of Wyandotte County, Kansas on July 14, 2011 at Document No. 2011R-08425. A true and correct copy of the Second Assignment is attached to this Complaint as **Exhibit G** and incorporated herein.

20. First Assignee, by and through Bank of America, N.A., a national banking association, as the successor by merger to LaSalle Bank National Association, a national banking association, assigned to Second Assignee all of its rights, title and interest in and to the ALR as reflected in an Assignment of Assignment of Leases and Rents (“**Second ALR Assignment**”) recorded with the Register of Deeds of Wyandotte County, Kansas on July 14, 2011 at Document No. 2011R-08426. A true and correct copy of the Second ALR Assignment is attached to this Complaint as **Exhibit H** and incorporated herein.

21. Plaintiff's interest in the subject personal property and Rents is properly perfected by way of filed UCC statements. True and correct copies of the filed UCC statements are collectively attached to this Complaint as **Exhibit K** and incorporated herein.

22. Plaintiff is the owner, holder and assignee of the Loan Documents, and all rights, title, interest and benefits therein.

23. Borrower has defaulted under the Note and the Mortgage by failing to pay the amount due.

COUNT I: SUIT ON A NOTE

24. The previous allegations of the Complaint are incorporated in this Count.

25. The Note provides that payment shall be made monthly. *See Exh. B*, p.2, § 2(b).

26. The Note further provides that it is an event of default if payment is not made when due. *See Exh. B*, § 2.01.

27. Borrower failed to pay the amount due on October 1, 2011, and each monthly payment since that date and has continued to this date to fail to pay the full amount due.

28. By way of a demand letter dated January 31, 2012 ("**Demand Letter**"), Plaintiff gave notice of default and made demand for payment. A true and correct copy of the Demand Letter is attached to this Complaint as **Exhibit I** and incorporated herein.

29. By way of a letter dated May 11, 2012 ("**Acceleration Letter**"), Plaintiff accelerated the obligations under the Loan Documents, and made demand for payment. A true and correct copy of the Acceleration Letter is attached to this Complaint as **Exhibit J** and incorporated herein.

30. Despite the demand for payment, Borrower has failed and refused to pay, and the full amount due under the Note remains due and owing.

31. The Note provides for a late charge, default interest and the payment of attorney fees and costs for enforcement of the Loan Documents. *See* **Exh. B**, §§ 6, 7 and 8.

32. Section 17 of the Note provides that it is governed by the law of the State in which the real property collateral is located, which in this case is Kansas.

33. The amounts due and owing under the Note are:

Principal	\$137,000,000.00
Interest (9/1/11 - 5/11/12 at 5.745%)	\$ 5,553,180.83
Late Charges	\$ 166,618.17
Default Interest (10/1/11 - 5/11/12 at 5.0%)	\$ 4,262,222.22
Prepayment Premium	\$ 32,470,433.90
Interest on Advances	\$ 43,309.17
Misc. Advances	\$ 4,062.54
Tenant Improvement and Leasing Balance	\$ (119,975.00)
Legal Fees Reserve Balance	\$ (10.00)
Processing/Document Prep Fee	\$ 850.00
TOTAL	\$179,380,691.84

Plus per diem interest and charges after May 11, 2012, and attorneys' fees, collection costs and expenses in an amount to be determined (collectively, "**Amounts Due and Owing**").

WHEREFORE, Plaintiff prays for the entry of Judgment on Count I against Borrower in the following amounts:

Principal	\$137,000,000.00
Interest (9/1/11 - 5/11/12 at 5.745%)	\$ 5,553,180.83
Late Charges	\$ 166,618.17
Default Interest (10/1/11 - 5/11/12 at 5.0%)	\$ 4,262,222.22
Prepayment Premium	\$ 32,470,433.90
Interest on Advances	\$ 43,309.17
Misc. Advances	\$ 4,062.54
Tenant Improvement and Leasing Balance	\$ (119,975.00)
Legal Fees Reserve Balance	\$ (10.00)
Processing/Document Prep Fee	\$ 850.00
TOTAL	\$179,380,691.84

Plus per diem interest and charges after May 11, 2012, and attorneys' fees, collection costs and expenses in an amount to be determined; and, for such other and further relief as the Court deems just and proper.

**COUNT II: FORECLOSURE OF MORTGAGE AND
APPOINTMENT OF A RECEIVER**

34. The previous allegations of the Complaint are incorporated in this Count.

35. The Mortgage provides that the failure by Borrower to make a monthly payment within 5 days after the date on which such payment is required by the Note and the failure to make full payment of the indebtedness when due are events of default. *See Exh. C*, § 10.1(a) and (b).

36. The Mortgage incorporated the covenants, conditions and agreements contained in the Note. *See Exh. C*, § 3.2.

37. The Mortgage provides that upon an event of default the beneficiary may, *inter alia*, "institute proceedings, judicial or otherwise, for the complete foreclosure of [the Mortgage]." *See Exh. C*, § 11.1(b).

38. Borrower waived any right of redemption. *See Exh. D*, § 14.2.

39. Section 17.1 of the Mortgage provides that it is governed by the law of the State in which the real property collateral is located, which in this case is Kansas.

40. The Mortgage provides that upon an event of default the beneficiary may, *inter alia*, apply for the appointment of a receiver for the Property "on an *ex parte* basis (any required notice of such appointment or any proceeding to appoint the same being hereby expressly waived) and without regard for the adequacy of the security for the Debt." *See Exh. C*, § 11.1(g).

41. The Mortgage provides that Borrower irrevocably consented to such an appointment of a receiver. *See Exh. C*, § 3.1(d).

42. The ALR provides that upon an event of default the beneficiary may, *inter alia*, “have a receiver appointed.” See **Exh. D**, §§ 6.2(m) and 1(g).

43. The Mortgage and the ALR provide that Borrower’s license to collect the Rents automatically terminates upon an event of default and that the beneficiary may thereafter collect the Rents. See **Exh. C**, §§ 1.11, 3.3 and **Exh. D** § 6.

44. Plaintiff seeks the immediate appointment of a receiver and this Court is authorized to appoint a receiver pursuant to federal law and the terms of the Mortgage (§§ 3.1(d), 3.3).

WHEREFORE, Plaintiff prays for the entry of Judgment on Count II against Borrower, for judicial foreclosure of the Mortgage securing the Property, for enforcement of the Mortgage and ALR, and for an Order:

1. Declaring that the Mortgage and ALR grant a valid first and prior lien upon the Property;
2. Ordering the enforcement of the Mortgage and ALR, including appointing a receiver to take possession of and manage the Property, to collect the Rents, to seek a sale of the Property, to perform other such duties as outlined in the Mortgage that are necessary to preserve the Property and Plaintiff’s interests therein, and to deliver to Plaintiff the net Rents, after payment of ordinary and necessary costs of maintaining the Property;
3. Ordering the enforcement and foreclosure of said Mortgage and ALR and stating that if all indebtedness due to Plaintiff under the Note is not paid within 14 days after the date of entry of judgment, an Order of Sale shall issue for this Court’s direction

to the U.S. Marshall commanding him to advertise and sell the Property according to law and apply the proceeds of such sale as follows:

- a) Payment of the costs of this action, including the costs of sale;
- b) Payment of any real property taxes that may be due and unpaid upon said premises;
- c) Payment of Plaintiff's judgment herein and ongoing interest thereon; and
- d) The balance to be paid to the Clerk of this Court for further disposition.

4. Declaring that every defendant, and every person claiming by, through or under them, be forever foreclosed, barred and restrained from setting up and claiming any right, title, interest, estate, equity or lien in, to or upon said premises, or any part thereof;

5. Declaring that Borrower has no right of redemption in or to the Property;

6. Directing the U.S. Marshall upon confirmation of the sale, to execute and deliver to the purchaser of such sale, or its successor and assigns as the case may be, a good and sufficient Deed for the Property and a Bill of Sale for the personal property;

7. Issuing a writ of assistance of any other necessary Order placing the holder of said Deed in full and complete possession of the Property;

8. Awarding attorneys' fees and expenses to Plaintiff and against Borrower in an amount to be determined; and,

9. Ordering such other and further relief as the Court deems just and proper.

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Respectfully submitted,

SNR DENTON US LLP

By: /s/ Jennifer K. Vath
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ATTORNEYS FOR PLAINTIFF

VERIFICATION

The undersigned, Andrea Helm, in her capacity as Special Servicing Asset Manager II of Midland Loan Services, as special servicer and attorney-in-fact for U.S. Bank National Association, as trustee for the registered holders of LBUBS Commercial Mortgage Trust 2007-C7, Commercial Mortgage Pass-Through Certificates, Series 2007-C7, hereby declares under penalty of perjury that the facts as alleged in this Complaint are true and correct to the best of her knowledge and understanding.

Signature: _____

STATE OF KANSAS)
) ss.
COUNTY OF JOHNSON)

Subscribed and sworn to before me, a notary public, this ____ day of May, 2012.

Notary Public

My commission expires:
